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FAIR EMPLOYMENT PRACTICES ORDINANCE

CITY AND COUNTY

OF

SAN FRANCISCO

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FAIR EMPLOYMENT PRACTICES ORDINANCE

File No. 15143-2

Ordinance No. 10478

(Series of 1939)

ORDINANCE PROHIBITING DISCRIMINATORY PRACTICES IN EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGION, ANCESTRY, NATIONAL ORIGIN OR PLACE OF BIRTH BY EMPLOYERS, EMPLOYMENT AGENCIES, LABOR ORGANIZATIONS, AND OTHERS; CREATING A COMMISSION ON EQUAL EMPLOYMENT OPPORTUNITY, AND PRESCRIBING ITS DUTIES AND POWERS GENERALLY; AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

The population of this City and County is composed of people of various racial, religious and ethnic groups. The practice of discrimination in employment on the grounds of race, religion, color, ancestry, national origin or place of birth exists in the City and County of San Francisco, as elsewhere, and such discriminatory practices are inimical to the public welfare and good order and require the exercise of the Legislative power to aid in their elimination. Such discriminatory practices tend to prevent members of various racial, religious and ethnic groups from reaching the full development of their individual potentialities, from providing adequately for the economic security of their families and the education of their children and from making the contribution to the industrial, business and civic life of this City and County of which they are capable.

Experience of other large cities has proved that legislation prohibiting such employment discrimination and providing means for its redress and prevention lessens the amount of such discrimination and directly promotes the public welfare and good government.

Section 2. Declaration of Policy.

It is hereby declared that every inhabitant of this City and County has the right to equal employment opportunity without being subjected to discrimination because of race, religion, color, ancestry, national origin or place of birth.

Section 3. Scope of Ordinance.

This ordinance applies to employment practices within the territorial limits of this City and County and to the hiring of persons elsewhere for work to be performed within the City and County where such hiring outside of the City and County is for the purpose of evading the provisions and requirements of this ordinance.

Section 4. Definitions.

(a) The term "person" wherever used in this ordinance means and includes any individual, partnership, corporation, labor organization, or other association, including those acting in a fiduciary or representative capacity whether appointed by a court or otherwise. The term "person" as applied to partnerships, labor organizations, or other associations includes their members and as applied to corporations includes their officers.

(b) The term "employer" wherever used in this ordinance means and includes the City and County, and

1. All departments, officers, agents or employees of the City and County and its instrumentalities.

2. All contractors and their sub-contractors engaged in the performance of any contract entered into with this City and County or any of its contracting agencies; and

3. All private employers having five (5) or more employees in this City and County exclusive of the parents, spouse, or children of such employer, or his domestic servants. The term "employer," however, shall not include religious or social corporations or associations not organized or operated for private profit.

(c) The term "labor organization" wherever used in this ordinance means and includes any organization in this City and County which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.

(d) The term "employment agency" wherever used in this ordinance means and includes any person engaging in business or regularly undertaking in this City and County, with or without compensation, to procure opportunities for employment or to procure, recruit, refer or place employees.

(e) The term "employment" wherever used in this ordinance does not apply to the employment of individuals to serve as domestic servants nor to the employment of individuals by religious or social corporations or associations not organized or operated for private profit.

(f) The term "discrimination" includes but is not limited to "segregation."

(g) The term "commission" means the City and County of San Francisco Commission on Equal Employment Opportunity.

Section 5. Unlawful Employment Practices.

It shall be an unlawful employment practice, except where based upon applicable security regulations established by the United States, by the State of California, or by the City and County of San Francisco:

(a) For any employer to refuse to hire any individual or to otherwise discriminate against any individual with respect to hiring, tenure, compensation, promotion, discharge or any other terms, conditions or benefits of employment, because of race, color, religion, ancestry, national origin or place of birth;

A determination or choice by the employer based upon standards or criteria uniformly, fairly and impartially applied to all applicants or persons considered shall not constitute a violation of this ordinance.

If the employer in fact makes occupational qualifications the basis of his determination, proof of discrimination must include proof that complainant is better qualified than the individual selected, promoted or retained.

(b) (1) For any employer, employment agency, or labor organization to use any form of application for employment or membership containing questions or entries regarding race, color, religion, ancestry, or national origin;

(2) For any employer, employment agency or labor organization to require of any applicant for employment or membership any information concerning race, color, religion, ancestry or national origin;

(3) It shall be permissible and lawful for an employer, subsequent to the employment of any individual, to require, secure and record any such information concerning an employee, including a photograph of such employee, if such inquiries are reasonably necessary to the operation of the employer's firm or business and such information is not used for the purpose of violating this ordinance. The right to require, secure and record such information shall be subject to the power of the Commission to impose limitations thereon in appropriate cases.

(c) For any employer, employment agency or labor organization to announce any policy or to cause to be published or circulated any notice, information, or advertisement relating to employment or membership which indicates any preference, limitation, specification, or discrimination because of race, color, religion, ancestry, national origin or place of birth;

(d) For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of race, color, religion, ancestry, national origin or place of birth;

(e) For any labor organization to discriminate against any individual in any way which would prevent his acquiring, or would terminate or limit, or otherwise adversely affect his union membership or his employment opportunities including his status as an applicant, his tenure, compensation, promotion, discharge or any other terms, conditions or privileges related to employment

because of race, color, religion, ancestry, national origin or place of birth;

(f) For any employer, employment agency or labor organization to discriminate against any individual because he has lawfully opposed any practice forbidden by this ordinance or because he had made a complaint or testified or assisted in any manner in any investigations or proceeding under this ordinance;

(g) For any person to obstruct or prevent any person from complying with the provisions of this ordinance or any order issued thereunder or to attempt to commit or cause to be committed any act declared by this ordinance to be an unlawful employment practice.

The burden of proving the existence of an unlawful employment practice shall be on the party holding the affirmative of the issue as required by Section 1981 of the Code of Civil Procedure of the State of California. In cases of alleged discrimination against individuals, evidence of a pattern of employment or quota system in existence subsequent to the effective date of this ordinance shall be admissible.

None of the acts made unlawful by subsections (a) through (g) of this section shall be unlawful employment practices if the employment, membership, or service in question by its unique nature requires classifications which include any of the forbidden criteria. The burden of proof shall be upon the person asserting the unique nature of the employment membership or service to establish such fact.

No employer shall be liable for any discrimination practiced by a labor organization unless such employer participates in or co-operates with such acts of discrimination by such labor organization. The fact that the employer agrees to secure all new employees from a labor organization or agrees to give the labor organization an opportunity to fill vacancies in employment or the fact that the employer agrees with the labor organization to recognize prior rights to employment based on seniority or previous employment in the industry does not, of itself, constitute participation or co-operation by the employer in any discrimination practiced by the labor organization.

Notwithstanding any other provision of this ordinance, it shall not be an unlawful employment practice for any employer, employment agency, or labor organization to require citizenship or residence qualifications, or both, as a condition of employment, membership, or service on a uniform, nondiscriminatory basis.

Section 6. Commission on Equal Employment Opportunity.

(a) The City and County of San Francisco Commission on Equal Employment Opportunity shall consist of seven (7) members

to be appointed by the Mayor with the approval of the Board of Supervisors. Two (2) of the members who are first appointed shall be designated to serve for terms of one (1) year, two (2) for two (2) years, two (2) for three (3) years and one (1) for four (4) years from the date of their appointments. Thereafter, members shall be appointed as aforesaid for a term of office of four (4) years, except that all of the vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his successor has been appointed and has qualified. The Mayor shall designate which of the members of the agency appointed shall be the first chairman, but when the office of the chairman of the Commission becomes vacant thereafter the Commission shall elect a chairman from among its members. The term of office as chairman of the Commission shall be for the calendar year or for that portion thereof remaining after each such chairman is designated or elected. Any member of the Commission may be removed by the Mayor upon notice and hearing for neglect of duty or for malfeasance in office but for no other cause.

It shall constitute malfeasance in office for any Commissioner to divulge or reveal to any person, except the parties to the proceedings, members of the Commission and its staff, any evidence or information obtained in any proceedings pursuant to Section 8(b) hereof.

It shall constitute malfeasance in office for any Commissioner to divulge or reveal to any person, except to the parties to the proceedings, members of the Commission and its staff or the City Attorney under and pursuant to Section 9 hereof, any evidence or information obtained in any proceedings pursuant to Section 8(c) hereof.

(b) The Board of Supervisors shall provide funds to compensate the Commissioners and to pay for an Executive Secretary and such other staff services and facilities as may be required by the Commission.

Any employee of the Commission who shall divulge or reveal to any person other than parties to the proceedings, members of the Commission and its staff any evidence or information obtained under or pursuant to Section 8(b) hereof, shall upon being found guilty by the Commission be subject to dismissal.

Any employee of the Commission who shall divulge or reveal any evidence or information obtained under Section 8(c) hereof to any person, except to parties to the proceedings, members of the Commission and its staff and the City Attorney, under and pursuant to Section 9 hereof, shall upon being found guilty by the Commission be subject to dismissal.

Section 7. Powers and Duties.

The Commission on Equal Employment Opportunity shall:

(a) Formulate plans of education to promote fair employment practices by persons subject to this ordinance.

(b) Make technical studies and prepare and disseminate educational material relating to discrimination and ways and means of eliminating it.

(c) Confer, co-operate with, and furnish technical assistance to persons subject to this ordinance in formulating educational programs for elimination of discrimination.

(d) Receive, investigate and seek to adjust all complaints of discrimination as herein provided.

(e) Make specific and detailed recommendations to the interested parties as to the method of eliminating discrimination.

(f) Render to the Mayor from time to time, or upon request, but not less than annually, a report of its activities.

(g) Make and publish reports of case histories of conciliation settlements made under this ordinance which in its judgment will effectuate the purposes of this ordinance. Reports of case histories of conciliation settlements shall not, unless the consent of the parties is first obtained, include names or other facts which might clearly identify the parties; but it shall be mandatory to publish representative case histories from time to time for the guidance and education of the public.

(h) Initiate complaints as provided in Section 8(a) hereof.

(i) Refer unsettled complaints to the City Attorney as provided in Section 9 hereof.

Section 8. Adjustment and Settlement of Complaints.

(a) All complaints before the Commission shall be written, signed, properly verified and filed by the individual who alleges discrimination against him within ninety (90) days after the alleged discriminatory act is committed, except that complaints alleging violations of Section 5(b) (1), (c), (f) and (g) hereof may be initiated by the Commission itself within ninety (90) days after the alleged discriminatory act is committed. A copy of such complaint shall be furnished to the person charged at the time of filing. Such complaint shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of and shall set forth the particulars thereof and contain such other information as may be required by the rules and regulations of the Commission.

Any employer whose employees, or some of whose employees, obstruct or prevent any person from complying with the provisions of this ordinance, or attempt to do so, may file with the Commission

a verified complaint asking assistance by conciliation or remedial action.

(b) Upon the filing of any complaint a member of the Commission shall make a full and prompt investigation in connection therewith. In such case the Commissioner may utilize the services of a staff assistant working under his direct supervision. If, upon such investigation, the Commissioner shall find that the person charged in the complaint has not engaged in or is not engaging in any unlawful employment practice, the complaint shall be dismissed.

If the Commissioner shall determine after such investigation that probable cause exists for the allegations made in the complaint, he shall endeavor to eliminate the unlawful employment practice charged in the complaint by means of conciliation and persuasion. Within the limits set forth in Section 9(c) the Commissioner may recommend such affirmative action as the case may require.

(c) In case of failure to eliminate the unlawful employment practice by the means provided in Section 8(b), a quorum of the Commission shall convene for the purpose of reviewing the matter and shall, by conciliation and mediation, endeavor to eliminate the discrimination charged. Such proceedings shall be private. In furtherance of such conciliation and mediation the Commission may make specific recommendations to the parties but such recommendations shall not constitute a decision, finding of fact, judgment or order of the Commission, or be binding upon, or be admissible in any court in any subsequent proceedings under Section 9 hereof. Within the limits set forth in Section 9(c) the Commission may recommend such affirmative action as the case may require.

(d) In the performance of its duties under the provisions of Section 8(c) of this ordinance, the Commission, by majority vote, may require by subpoena the attendance of any person and/or the production of any relevant papers, documents or records under his control which are relevant and reasonably necessary to the inquiry. The Commission shall have no other power of subpoena.

(e) All evidence and information given to or obtained by the Commission in any proceedings under the provisions of Section 8(b) hereof shall be confidential and no such evidence or information shall be divulged or revealed to any person other than parties to the proceedings, members of the Commission and its staff or used against any person at any time by any member or employee of the Commission.

All evidence and information given to, or obtained by the Commission in any proceedings under the provisions of Section 8(c) hereof shall be confidential and no such evidence or information shall be divulged or revealed to any person except to parties to the

proceedings, members of the Commission and its staff, and the City Attorney in cases arising under the provisions of Section 9 hereof.

The voluntary giving or furnishing of any information or evidence to the Commission in any proceedings under the provisions of Section 8(b) hereof shall not constitute a waiver of any legal or constitutional privileges or defenses.

(f) If the parties accept the recommendations of the Commission the matter shall be deemed settled and terminated and no other proceedings shall be had or taken.

(g) Whenever the Commission determines that any officer, agent or employee of the City and County of San Francisco has engaged or is engaging in an unlawful employment practice it shall recommend appropriate action to the Mayor.

Section 9. Court Proceedings.

(a) If the Commission is unable to eliminate the discrimination charged, the Commission may, by a majority vote of all members certify the matter to the City Attorney for appropriate legal action to secure compliance with the provisions of this ordinance.

The Commission shall, at the time of certifying said matter, transmit to the City Attorney a copy of its recommendations in such case.

The City Attorney shall proceed in the name of the City and County, no less than twenty (20) and no more than forty (40) days thereafter, to invoke the aid of an appropriate court to secure compliance with the provisions of this ordinance. If the Commission prior to the commencement of the court proceedings as a result of its effort of adjustment or otherwise finds that the defendant is no longer engaging in unlawful employment practices and has complied with the recommendations of the Commission, no such proceedings shall be instituted.

(b) In any court proceedings instituted by the City Attorney the court shall hear and consider the matter as if it had never been before the Commission, and there shall be no presumptions in favor of any prior action of the Commission, nor shall there be any presumption against a defendant arising out of his refusal to accept or comply with any recommendation of the Commission. In such cases the burden of proof shall be upon the City and County to establish by competent and substantial evidence that the defendant has violated the ordinance.

(c) No person shall be liable in damages or for any monetary judgment in excess of a sum equal to ninety (90) days' back pay, wages or earnings of the individual discriminated against. It shall be the duty of any individual discriminated against to minimize his loss or damage by attempting to secure other suitable employment, and the liability of the employer, labor organization or employment

agency shall be reduced to the extent such individual has failed to minimize his damage.

(d) In every court proceeding instituted by the City Attorney to secure compliance with this ordinance, the defendant shall be entitled to a jury trial on the issue of damages or back pay, but the court, without a jury may make all other equitable orders pertaining to all other issues.

(e) Any employer who employs any individual pursuant to any formal or informal recommendation of the Commission, or pursuant to any order of the court rendered hereunder, may make adjustments in his work force so that such employment does not increase the number of his employees or require him to employ more persons than necessary.

Section 10. City Contracts.

In the event that two or more adverse court decisions are rendered in cases originating within a period of one (1) year whereby any employer, labor organization or employment agency is found by the court to have violated the provisions of this ordinance and where such employer, labor organization or employment agency has been guilty of deliberate, wilful and persistent violations of this ordinance, the Commission shall after securing declaratory relief as hereinafter set forth certify such finding to the Mayor, whereupon the Mayor shall order all departments of this City and County not to enter into any contract with such employer, labor organization or employment agency for a period of one (1) year.

Before making such a finding the Commission by appropriate action for declaratory relief brought in the name of the City and County of San Francisco by the City Attorney must obtain from the Superior Court a declaration that such employer, labor organization or employment agency has been guilty of such deliberate, willful and persistent violations of this ordinance as to entitle the Commission to certify such findings to the Mayor.

Section 11. No Duplication of Remedies.

The rights and remedies herein granted by the provisions of this ordinance to a person aggrieved are deemed to be entirely adequate and this ordinance and the provisions thereof shall not be construed as granting to an aggrieved individual any right to pursue a civil action in addition to, or in place of, the remedies enumerated in this ordinance.

Section 12. Severability.

The provisions of this ordinance are severable and if any provision, sentence, clause, section or part thereof is held illegal, invalid or unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability

shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or their application to other persons and circumstances. It is hereby declared to be the legislative intent that this ordinance would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the ordinance or any part thereof is inapplicable had been specifically exempted therefrom.

Section 13. Repeal.

Any ordinance or part of any ordinance conflicting with the provisions of this ordinance be and the same is hereby repealed so far as the same affects this ordinance.

Passage for second reading July 1, 1957.

Final passage July 8, 1957.

Approved July 10, 1957.

Effective August 9, 1957.

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